

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application)

of)

MOLOKAI PUBLIC UTILITIES, INC.)

For review and approval of rate)
increases; revised rate schedules; and)
revised rules.)
_____)

Docket No. 2009-0048

PUBLIC UTILITIES
COMMISSION

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FILED

**MOTION TO DISMISS
COUNTY OF MAUI AS AN INTERVENOR**

**MEMORANDUM IN SUPPORT OF MOTION
TO DISMISS COUNTY OF MAUI AS AN INTERVENOR**

and

CERTIFICATE OF SERVICE

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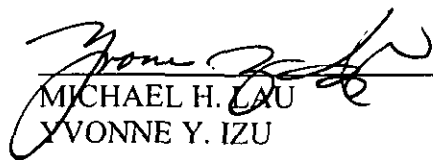
MOTION TO DISMISS
COUNTY OF MAUI AS AN INTERVENOR

MOLOKAI PUBLIC UTILITIES, INC., by and through its attorneys, Morihara Lau & Fong LLP, moves to dismiss the County of Maui as a party in this docket.

This motion is made pursuant to and in accordance with Hawaii Administrative Rules § 6-61-41, and is supported by the attached Memorandum in Support of Motion.

No hearing is requested on this motion.

DATED: Honolulu, Hawaii, February 3, 2010.



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MEMORANDUM IN SUPPORT OF MOTION
TO DISMISS COUNTY OF MAUI AS AN INTEVENOR

In granting the County of Maui's ("County") Motion to Intervene, the Public Utilities Commission stated:

The commission will reconsider the intervenors' participation in this docket if, at any time, during the course of this proceeding, the commission determines that one or more of the intervenors are (A) unreasonably broadening the pertinent issues raised in this docket; (B) are unduly delaying the proceeding; or (C) failing to contribute to the development of a sound record, meaningfully participate in this proceeding, or follow the commission's rules or orders.

Order Granting Intervention to the County of Maui, West Molokai Association, and Stand For Water, filed October 16, 2009, Ordering Paragraph No. 6, page 33.

To date, the County has (1) attempted to unreasonably broaden the issues by submitting overly broad and irrelevant information requests to Molokai Public Utilities, Inc. ("MPU"); and (2) after requesting and obtaining an extension of time to file direct testimony, failed to contribute to the development of a sound record and to meaningfully participate in this proceeding by failing to file any direct testimony, thereby not following the Commission's Order Approving Proposed Procedural Order, as Modified, filed on November 6, 2009 (hereafter "Procedural Order"). Moreover, the County's actions to date indicate the County intervention in

this proceeding will not be meaningful and contribute to the development of the sound record. To the contrary, the County's continuing status as an intervenor will likely result in a protracted hearing and undue delay of the proceeding.

For these reasons, MPU respectfully requests that the Commission dismiss the County of Maui as an intervenor.

A. County's Attempt to Unreasonably Broaden Issues

The County submitted 20 information requests (IRs) to MPU on November 9, 2009. Of the 20 IRs, MPU objected to eight (40%) as being irrelevant and or unduly broadening the issues in the case. In subsequent filings (i.e., supplemental IRs), the County did not attempt to narrow the scope of the information requests to which MPU objected, nor has the County challenged MPU's objection.

Additionally, in attempting to unreasonably broaden the issues, the County disregarded the Commission's ruling on the issues pertinent to this proceeding. The County had declined to join with MPU, the Consumer Advocate, and Molokai Properties Limited (MPL) in stipulating to a procedural order. Instead, the County filed its own proposed procedural order, which, among other things, expanded the statement of the issues. Exhibit A to County of Maui's Proposed Procedural Order, filed October 28, 2009. The Commission either rejected outright, or rejected as unnecessary because implicitly incorporated within the issues as set forth by the stipulating parties, all of the County's modifications to the statement of issues. One of the issues proposed by the County that was rejected outright by the Commission was the following:

- (i) Whether MPU should receive a rate increase given the manner in which MPU issued and outstanding voting stock is held and whether PUC approval had been obtained.

Notwithstanding the PUC's holding that this was not an issue pertinent to the case, the County nevertheless asked MPU for "[c]orporate records reflecting the issuance of stock certificates to any person or entity, the dates of issue, the consideration paid or promised for the stock, and the date(s) on which the consideration was paid or promised." County-IR-4.

Subsequently, notwithstanding MPU's objection that the IR was outside of the scope of issues for this proceeding, the County proceeded to present the identical IR to MPL. See County-IR-103 filed on January 19, 2010.

B. County Fails to File Direct Testimony

Despite having asked for, and been granted, a one week extension of time to January 13, 2010, to file its direct testimonies and exhibits, the County filed a statement that it

would not be filing direct testimony in this proceeding and instead intends to establish, through cross-examination of witnesses and exhibits, that the proposed rate increases by Molokai Public Utilities, Inc. ("MPU") are unreasonable and unjust, and that MPU's water service does not comply with applicable federal, state, and county water quality laws, rules and regulations.

County of Maui's Statement Regarding Direct Testimony, filed on January 13, 2010.

Because the County refused to file direct testimony, MPU is foreclosed from "submission of IRs to [the County] on Direct Testimonies and Exhibits" in accordance with the Stipulated Regulatory Schedule incorporated in the Procedural Order. Further, MPU does not have any way of knowing which components of the rate proposal the County has objections to, thereby precluding settlement discussions¹ and the ability to narrow the issues prior to hearing.

More importantly, as the Commission noted in the Order Dismissing Stand For Water As An Intervenor in this case, "[w]ithout . . . timely direct testimonies and exhibits, [the County] has

¹ Settlement discussions with other parties, i.e., the Consumer Advocate and West Molokai Association, are unlikely to progress to any significant extent when the parties have no idea as to the County's positions or even its primary areas of concern. It would be fruitless for the other parties and MPU to resolve their differences on some items only to have to go through a full hearing process on the agreed upon items at the County's behest.

failed to present any evidence or arguments to which MPU may have the opportunity to rebut as part of the water utility's forthcoming rebuttal testimonies and exhibits." Order Dismissing Stand For Water As An Intervenor, filed January 19, 2010, at p. 3.

It should be noted that in its motion to intervene, the County stated that because it relies upon MPU for firefighting purposes and maintaining the County's public parks, "a substantial and exorbitant rate increase as proposed by . . . MPU will have a significant impact on the County as a customer." County of Maui's Motion to Intervene, filed on September 11, 2009, at p. 8. It is difficult to imagine how the County plans to inform the Commission of the impact that the proposed rate increase would have on the County without direct testimony and relying only on cross-examination. In fact, when asked by West Molokai Association ("WMA") to provide information about the annual amounts paid by the County for water provided by MPU at County facilities, the County refused to respond. County Response to WMA-IR-COM-109, filed on January 28, 2010. *Having no testimony from the County and the County's refusal to provide information pertaining to an issue that the County identified as a basis for intervention place MPU in a very awkward and difficult position of having to guess what the County may spring on the utility during the hearing.*

Similarly, to persuade the commission to grant its motion for intervention, the County stated that it "will . . . be able to provide much needed context to the underlying issues which form the bases for Wai'ola's and MPU's requests for a rate increase." County of Maui's Motion to Intervene, at p. 11. To date, the County has failed to do so, and it is difficult to understand

how the County intends “to provide that much needed context” without filing any testimony, without having any of its own witnesses, and relying solely on cross-examination.²

C. County’s Intervention Likely to Result in Protracted Hearing and Undue Delay

The County’s actions to date in this proceeding clearly indicate that its continued status as an intervenor will result in a protracted hearing and cause undue delay in bringing a conclusion to this case.

As noted above, the County’s refusal to file testimony precludes settlement discussions and the ability to narrow the issues prior to hearing. The County’s statement that it would be relying solely on cross-examination to make its case certainly gives the impression that the parties should expect a protracted hearing.

When asked by WMA to provide citations to the laws and regulations with which the County believes MPU is non-compliant, the County objected to having to provide such information during the discovery phase of the proceedings. County Response to WMA-IR-COM-102, filed on January 28, 2010. Obviously, it is the County’s purpose to not provide MPU an opportunity for written rebuttal, but to “surprise” MPU at the hearing. If the County is allowed to do that, there is a good probability that the hearing may have to be recessed to allow MPU to gather the evidence it needs (including, but not limited to, locating an appropriate witness) to respond to cross-examination or provide rebuttal testimony.

Other actions taken by the County in this proceeding add to the concern that this proceeding will be unnecessarily protracted. Two incidents have already been noted above: (1) The County asked for, obtained MPU’s concurrence, and the Commission’s permission, to extend the time for filing direct testimony, only to state that it will not file direct testimony.

² Analogous to this, the Commission, in dismissing Stand For Water (“SFW”) as an Intervenor, noted that SFW, in its motion to intervene, had listed eight “expert” witnesses on its behalf, but then failed to file any testimony. Order Dismissing Stand For Water As An Intervenor, at p. 3.

(2) Ignoring the Commission's order rejecting the issue of voting stock as not being pertinent to the case, the County proceeds to issue an IR on this issue; then, notwithstanding MPU's objection to this IR as irrelevant and unreasonably broadening the issues, the County proceeds to issue the same IR to MPL.

Indeed, the IRs issued by the County suggest that very little thought went into tailoring the IRs to this particular proceeding and the facts set forth in MPU's application. For example, County-IR-5 requested "[f]inancials, including MPU's audited financial statements. If none exist, then provide all unaudited financials for the period January 2000 to the present." And County-IR-10 asked for "[a]ll documents, evidencing loans, notes payable, or loans guaranteed by MPL for the benefit of MPU for the period January 2000 to the present." Had the County done even a cursory review of MPU's amended application, these IRs would not have been asked because Exhibit MPU-2 clearly provided the answers.

Additionally, the SIRs issued by the County were not follow-up questions to MPU's responses to the initial set of IRs, but were in the nature of original IRs. In other words, the County simply used the SIR portion of the Stipulated Regulatory Schedule to extend the period of time for filing IRs.³

Although the County's actions have not yet caused undue delay in the proceedings, they have caused MPU's consultant and legal counsel to expend time and effort (and, therefore, increased regulatory expenses) perhaps unnecessarily. Moreover, the County's actions to date suggest a callous disregard for the Commission's procedures, practices, and orders, which is likely to result in an undue amount of procedural issues raised during the hearing. Added to the fact that there is no opportunity for narrowing the disputed issues, MPU is gravely concerned


³ MPU considered, but in the end decided against, objecting to the County's SIRs in the interest of providing relevant information for the record, and because raising objections potentially could result in incurring more legal costs and delay.

that the County's continued role as an intervenor in this case will result in unduly protracted hearings and possible delay in the schedule.

D. Conclusion

Based on the foregoing, MPU respectfully requests that the Commission reconsider its Order granting Maui County's Motion to Intervene and dismiss the County of Maui as an intervenor.

DATED: Honolulu, Hawaii, February 3, 2010.



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INC.

CERTIFICATE OF SERVICE

I (we) hereby certify that copies of the foregoing document were duly served on the following parties, by having said copies to be mailed, postage prepaid, properly addressed, or hand delivered, to the following:

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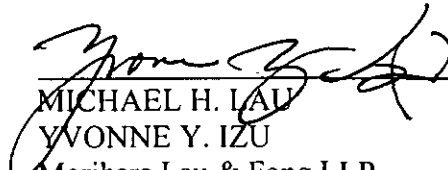
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